

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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B.L., a minor, by her father,  
LAWRENCE LEVY, and her mother,  
BETTY LOU LEVY

Plaintiffs,

v.

MAHANoy AREA SCHOOL DISTRICT,

Defendant.

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: Civil Action No. 3:17-cv-1734  
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: (The Hon. A. Richard Caputo)  
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**DEFENDANT’S STATEMENT OF UNDISPUTED FACTS**

The Defendant, Mahanoy Area School District (the “District”), by and through its undersigned counsel, hereby submits this Statement of Undisputed Facts in support of their Motion for Summary Judgment.

1. Plaintiff B.L. is 16 years old and lives with her parents and siblings in Mahanoy City, Pennsylvania. Exh. D-11 [Complaint], ¶ 3; Exh. D-17 [B.L. Depo. Tr.], 9:14-22, 17:14-15.

2. B.L. is currently an 11<sup>th</sup>-grade student at Mahanoy Area High School (“MAHS”) in the District. Exh. D-17, 13:1-3.

3. Plaintiff Lawrence Levy is B.L.’s father. Exh. D-11, ¶ 4.

4. Plaintiff Betty Lou Levy is B.L.’s mother. Exh. D-11, ¶ 5.

5. The District is a political subdivision of the Commonwealth of Pennsylvania located in Schuylkill County. The District's administrative offices are located at 1 Golden Bear Drive, Mahanoy City, PA 17948. Exh. D-11, ¶¶ 6-7.

6. B.L. was a member of MAHS's junior varsity cheerleading squad as a freshman during the 2016-2017 school year. Exh. D-11, ¶ 11.

7. The coaches for the MAHS cheerleading team – both varsity and junior varsity – during the 2016-2017 school year were Nicole Luchetta-Rump (“Luchetta-Rump”) and April Gnall (“Gnall”). Exh. D-11, ¶ 12.

8. Luchetta-Rump is a math teacher at MAHS. Exh. D-20 [Luchetta-Rump Dep. Tr.], 7:17-18.

9. Gnall is a third-grade teacher in the District. Exh. D-21, 6:6-7.

10. The cheerleading team is active throughout the year, including the summer. Exh. D-11, ¶ 14; Exh. D-20, 13:18-25; Exh. D-21, 7:17-8:5.

11. The cheerleading team has a cheer camp each summer during which the cheerleaders learn and practice their cheers, routines, and stunts. The team then practices up to twice per week in the autumn and winter during the school year. Exh. D-17, 41:10-42:12, 43:25-44:16; Exh. D-20, 14:1-21.

12. Each May, the cheerleading team holds tryouts for the following school year. The tryouts are scored by judges who do not include the team coaches. Exh. D-17, 35:12-36:7; Exh. D-20, 8:16-9:12.

13. MAHS Cheerleaders are expected to abide by a set of team rules (the “Cheerleading Rules”). Exh. D-3.

14. Cheerleaders who make the team are issued District uniforms and must wear the uniforms when performing. The uniforms bear the markings of the District. Exh. D-3; Exh. D-17, 91:4-9

15. When Luchetta-Rump and Gnall began coaching the team during the 2015-2016 school year, they adopted the Cheerleading Rules already in place under the previous coach and made minor changes. Exh. D-20, 16:5-17

16. The Cheerleading Rules are explained to team members when they try out for the team. Exh. D-20, 12:16-13:1.

17. B.L. received a copy of the Cheerleading Rules when she joined the junior varsity cheerleading team. Exh. D-3; Exh. D-11, ¶ 19.

18. Prior to the cheerleading tryouts for the 2017-2018 school year, B.L. and her mother read the Cheerleading Rules and signed a document acknowledging receipt of the rules. Exh. D-12; Exh. D-18, 12:14-13:3; Exh. D-16 [Betty Lou Depo. Tr.], 42:9-21.

19. The Cheerleading Rules state, *inter alia*: “Please have respect for your school, coaches, teachers, other cheerleaders and teams. Remember, you are representing your school when at games, fundraisers, and other events. Good sportsmanship will be enforced, this includes foul language and inappropriate

gestures.” (hereinafter referred to as the “Respect Rule”) Exh. D-11, ¶ 24; Exh. D-3.

20. The requirements of good sportsmanship are outlined in the regulations of the Pennsylvania Interscholastic Athletic Association, Inc. (“PIAA”), the nonprofit organization that establishes policies and adopts competition rules for its member school districts across the commonwealth. Exh. D-20, 22:3-22.

21. Coach Luchetta-Rump refers to the PIAA regulations, which are printed in the MAHS Handbook, at times when trying to determine whether certain behavior constitutes poor sportsmanship. Exh. D-20, 22:17-21.

22. The Cheerleading Rules further state, “There will be no toleration of any negative information regarding cheerleading, cheerleaders, or coaches placed on the internet.” (hereinafter referred to as the “Negative Information Rule”) Exh. D-11, ¶ 25; Exh. D-3.

23. The Negative Information Rule was revised for the 2016-2017 school year. The rule previously required automatic dismissal from the team for a violation of the rule. Exh. D-20, 16:18-17:19.

24. The cheerleading coaches can create rules for the team as they see fit, without review by any other District employee or the District’s School Board. Exh. D-20, 19:24-20:3; Exh. D-22, 8:12-9:7.

25. At her deposition, B.L. testified that she believes the Cheerleading Rules are reasonable, including the Respect Rule and the Negative Information Rule. Exh. D-17, 51:11-18, 53:20-55:16, 56:20-58:18.

26. At her deposition, B.L. testified that she believes use of the word “fuck” violates the Respect Rule when a cheerleader is representing MAHS. Exh. D-17, 58:20-59:2.

27. B.L. further testified that giving the middle finger is an “inappropriate gesture” as contemplated in the Respect Rule. Exh. D-17, 58:20-59:2.

28. B.L.’s mother believes the School District has the right to teach students about respect and to impose appropriate rules. Exh. D-16, 37:6-38:10.

29. Every year, MAHS distributes to all students – including B.L. – a Student Handbook that contains rules of conduct. Exh. D-17, 59:4-12.

30. The Student Handbook contains a section titled “Personal Conduct,” which states:

Participation on an athletic team or cheerleading squad in the Mahanoy Area School District is a privilege and the participants must earn the right to represent Mahanoy Schools by conducting themselves in such a way that the image of the Mahanoy School District would not be tarnished in any manner. Any participant whose conduct is judged to reflect a discredit upon himself/herself, the team, or the Mahanoy Schools, whether or not such activity takes place during or outside school hours during the sports season, will be subject to disciplinary action as determined by the coach, the athletic director and/or the school principal.

Exh. D-4.

31. B.L. testified that she understood when she received the Student Handbook that she was required to comply with the rules in the Handbook. She also never objected to the rules in the Handbook. Exh. D-18, 9:23-10:12.

32. B.L. never objected to, or filed a complaint, regarding the Cheerleading Rules. Exh. D-18, 11:18-12:4.

33. B.L. participated in cheerleading voluntarily. Participation in extracurricular activities is not required to graduate from MAHS. Exh. D-18, 13:12-14:9.

34. In May 2017, after having spent the 2016-2017 school year on the junior varsity squad as a freshman, B.L. attended the tryouts for the 2017-2018 cheerleading team. Because B.L. received a low score on her tryout, she failed to make the varsity squad, and was assigned to the junior varsity squad again for her sophomore year. Exh. D-20, 68:2-4.

35. B.L. was upset that an incoming freshman made the varsity squad. Exh. D-20, 69:24-70:6.

36. B.L. sent a text message to Coach Luchetta-Rump asking if cheerleaders were required to spend at least one year on the junior varsity squad. When the coach informed responded that that was not the case, B.L. responded, "That's stupid." Exh. D-10; Exh. D-20, 70:15-25.

37. On or about May 27, 2017, B.L. posted a “Snap” to the Snapchat social media application showing her and a friend holding up their middle fingers. The photo was accompanied by the text: “fuck school fuck softball fuck cheer fuck everything” superimposed on the photograph. Exh. D-1; Exh. D-11, ¶ 26; Exh. D-17, 14:21-16:2; Exh. D-25 [Plf. Responses to Interrogs.], Response 1(b).

38. B.L. took the photograph, typed in the text, and posted the Snap using her cellular phone. Exh. D-1; Exh. D-17, 15:24-16:2, 47:3-5; Exh. D-25, Response 1(b).

39. The photograph was taken at the Cocoa Hut, a Mahanoy City convenience store. Exh. D-1; Exh. D-11, ¶ 29; Exh. D-17, 45:20-24, Exh. D-25, Response 1(b).

40. B.L. created and posted the Snap and wrote “fuck cheer” because she was mad that she had failed to make the varsity cheerleading squad. Exh. D-17, 87:7-19; Exh. D-20, 73:4-13; Exh. D-16, 39:17-40:10.

41. B.L. also created and posted a second Snap at or near the same time as the first Snap. The second Snap had no photograph, but contained only the statement, “Love how me and [redacted]<sup>1</sup> get told we need a year of jv before we make varsity but that’s doesn’t matter to anyone else?” Exh. D-2.

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<sup>1</sup> The name of the other student referenced by B.L. has been removed due to privacy concerns.

42. The two Snaps were shared via Snapchat with approximately 250 of B.L.'s friends, many of whom were District students. Exh. D-11, ¶ 31; Exh. D-25, Response 2.

43. Coach Gnall received a call from her daughter, then a MAHS cheerleader, who had been informed by another cheerleader that B.L. had posted inappropriate Snaps. After the phone call, Gnall's daughter sent Gnall screenshots of the Snaps. Exh. D-21, 9:18-21.

44. Coaches Gnall and Luchetta-Rump jointly decided to suspend B.L. from the cheerleading team for one year for violating the Cheerleading Rules by posting the offensive Snaps. Exh. D-20, 51:5-7.

45. The cheerleading coaches did not need – and did not receive – authorization from the principal, school district, or school board to suspend B.L. from the team. Exh. D-20, 51:8-12; Exh. D-22, 7:16-8:4, 10:1-4.

46. B.L.'s discipline did not include any suspension or expulsion from her regular course of education or from school. Exh. D-22, 29:16-25; Exh. D-25, Response 4.

47. Following the suspension, B.L. was upset for about a week or so. Exh. D-19 [Lawrence Levy Depo. Tr.], 12:4-24.

48. B.L. did not seek medical care or any type of therapy to deal with her emotions because of her suspension. Exh. D-19, 13:1-12.



49. B.L.'s father, Lawrence Levy addressed B.L.'s suspension with the School Board at their regular meeting on June 29, 2017. Exh. D-22, 10:17-25.

50. There was never a school board vote on whether to uphold B.L.'s suspension from the cheerleading team. Exh. D-22, 7:26-8:4, 11:1-5, 12:25-13:1.

51. The School Board decided that it should not get involved in the minutiae of extracurricular activities, and that coaches must be permitted to hold students accountable for their actions. Exh. D-22, 14:5-16.

52. B.L.'s suspension from the cheerleading team was intended to last only for the 2017-2018 school year. She would have been eligible to rejoin the team for the 2018-2019 school year. Exh. D-20, 38:2-12.

53. The incident surrounding B.L.'s posting of the Snaps was only the second time that Coaches Luchetta-Rump and Gnall had to address a violation of the Negative Information Rule resulting in a suspension from the team. Exh. D-20, 30:9-20.

54. The prior incident occurred during the 2015-2016 school year and led to the suspension of a cheerleader from the team for the remainder of the basketball regular season. Exh. D-20, 30:17-31:12.

55. Issues concerning negative information communicated electronically must be addressed for the cheerleading coaches to "avoid chaos" and maintain a "team-like environment." Exh. D-20, 29:24-30:8, 31:24-32:20.

56. Squabbling among the teenagers on the MAHS cheerleading team – including by electronic means – is a fairly typical occurrence. Exh. D-20, 32:21-22.

57. B.L. was disciplined for violating the Respect Provision and the Negative Information Rule of the Cheerleading Rules, as well as for violating the PIAA rules, including the Personal Conduct provision of the Student Handbook. Exhs. D-3, D-4; Exh. D-20, 53:15-55:10.

58. The cheerleading coaches would not have suspended B.L. from the team if her Snaps had not referenced cheerleading. Exh. D-20, 46:17-47:6.

59. After B.L. posted the Snaps, several MAHS students – both cheerleaders and non-cheerleaders – approached Coach Luchetta-Rump to express their concerns that the Snaps were inappropriate. Exh. D-20, 58:13-59:11.

60. Students were visibly upset and voiced their concerns to Luchetta-Rump repeatedly for several days. Exh. D-20, 60:20-61:20.

61. When B.L. returned to the team following the granting of the preliminary injunction, a majority of cheerleaders on the team were upset that she had been permitted to return, and at least eight cheerleaders expressed their disappointment to Coach Luchetta-Rump. Exh. D-20, 62:23-65:6; Exh. D-22, 21:8-26:3.

62. B.L. testified that it is a proper role for school districts to teach students that there are consequences for making crude and profane communications on social media. Exh. D-18, 30:24-31:8.

63. B.L.'s suspension from the cheerleading team did not interfere with her academic performance. Exh. D-17, 33:7-11; Exh. D-16, 12:24-13:2; Exh. D-19, 13:13-15:3.

64. Other than upsetting B.L., her mother Betty Lou Levy, does not know any other way that B.L. was affected by the suspension. Exh. D-16, 11:19-13:2.

65. The Cheerleading Rules are intended, in part, to teach high school students to follow rules of society, which teaches team-building skills that students will take with them after they graduate from high school. Exh. D-20, 41:10-13; Exh. D-18, 36:11-37:4.

66. The Cheerleading Rules and rules for other extracurricular activities teach students that certain privileges come with greater responsibilities and higher standards. Exh. D-20, 43:10-44:9.

Respectfully submitted,

Date: December 20, 2018

/s/ David W. Brown

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